From: David Frossard
To: Microsoft ATR
Date: 12/11/01 6:46pm
Subject: Microsoft Settlement

c/o
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
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To the Court (re: United States vs. Microsoft proposed settlement):

I am writing as a private citizen (albeit one with decades of computing experience and intimate knowledge of the computer industry) under the provisions of the Tunney Act (Antitrust Procedures and Penalties Act) 15 U.S.C. ? 16 requiring 60 days of public comment on proposed antitrust settlements.

I object strongly to the proposed DOJ-MS settlement, which will do little or nothing to (1) punish Microsoft for past uncompetitive monopoly behavior; (2) prevent Microsoft from engaging in such behavior in the future; (3) divest Microsoft of the fruits of its past behavior; (4) increase competition in markets controlled by Microsoft.

In fact, certain provisions will tend to increase Microsoft's monopoly and may especially put Open Source competitors to Windows, such as Linux, at a further competitive disadvantage.

Have we learned nothing from previous, toothless settlements between the DOJ and Microsoft?

At a minimum, a truly effective agreement should include (but not be limited to the following) provisions:

1. Microsoft must publish and open all Application Programming Interfaces (APIs) to the general public (i.e. to ALL competitors, not just a select

few), on penalty of massive fines or contempt-of-court citations. (I suggest that a bounty system could be put in place, whereby those identifying unpublished Microsoft APIs would receive a large payment for their efforts; other methods may also suffice.) This provision the only way to ensure that Microsoft's few remaining competitors are able to fairly compete in the Windows application space -- that Microsoft can't continue to use secret APIs to make its products function better than competitors' when running under Windows. (As opposed to Microsoft's famous in-house slogan, circa 1990: "Windows is not done until WordPerfect won't run.)

2. Microsoft must publish and open all document formats to the general public, under similar penalty terms. Today, competitors to Microsoft Office are locked into that application primarily because competitors can not perfectly translate to/from Office to/from competing applications. Indeed, it is widely known in the industry that Microsoft changes its formats regularly simply to foil the efforts of its competitors to inter-operate cleanly with Office. If Office formats were truly open -- and thus understandable -- competitors could at least try to challenge Office in that space.

3. Microsoft should pay a massive fine based on the fruits of previous illegal monopoly behavior. Currently Microsoft has an estimated $40 billion in cash reserves. It is not unreasonable to fine the company, say, half of that -- $20 billion -- to remove illegally gotten financial gains.

4. There should be setup a streamlined system by which complaints about Microsoft's inevitable flouting of this settlement (see, e.g., the previous MS-DOJ settlement) are quickly resolved -- perhaps by binding arbitration supervised by this Court, rather than by further, lengthy antitrust suits brought by the government.

Much more can be done here, but these are the four most important elements, in my opinion, of a just and comprehensive settlement -- as opposed to the abject surrender offered by the DOJ here.

I hope you will reject the current proposed settlement and protect the interests of consumers and competitors alike by imposing far more comprehensive remedies.

Sincerely,

David Frossard
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